

# THE REFERENDUM

A HANDBOOK TO THE POLL OF THE  
PEOPLE, REFERENDUM, OR DEMOCRATIC  
RIGHT OF VETO ON LEGISLATION  
BY JOHN ST. LOE STRACHEY

“On minor affairs the Few decide, on great affairs the Many.”

(Paraphrased from Tacitus' account of the early  
Nordic polity.)

T. FISHER UNWIN LTD  
LONDON: ADELPHI TERRACE

*First Published in 1924.*

*• All rights reserved.*

*Portions of the first part of this book originally appeared in articles in "The  
Nineteenth Century and After."*)

## MR. CHAMBERLAIN AND THE REFERENDUM

*"I HAVE often wondered that we have never adopted the principle of the Referendum as practised in Switzerland, and also in many parts of the United States of America. It is the only way in which the decision of great national questions can be separated from all the complicated issues of party government. At a General Election the voter is influenced partly by his desire to see his own party in office, and partly by his views on a number of special questions, many of them purely local or even personal.*

*"If, in the case of a new policy, not necessarily political, it were possible to eliminate all side issues, we might have a national verdict which all sections would accept, and which would be given without reference to the perennial struggle between the 'Outs' and the 'Ins,' which is at present the chief occupation of political life.*

*"In the absence of such machinery for testing public opinion, I will not venture on any prediction as to the exact time at which a conservative nation such as ours will decide on the adoption of new methods to meet new conditions."—November 9, 1903.*





## CONTENTS

	PAGE
INTRODUCTION - - - - -	9
CHAPTER I	
WHAT IS THE REFERENDUM? - - - -	13
CHAPTER II	
HOW TO WORK THE POLL OF THE PEOPLE - -	40
CHAPTER III	
TEXT OF POLL OF THE PEOPLE BILL - -	58
CHAPTER IV	
THE REFERENDUM IN SWITZERLAND - -	77
A SHORT BIBLIOGRAPHY - - - - -	97



# THE REFERENDUM

## INTRODUCTION

### A DEMOCRATIC CREDO

IN the book to which these words are a preface I assume throughout that democracy has not only come to stay, but that with all its faults and drawbacks democracy is the fairest, the safest, the most just, and therefore the best way of government.

In any case, and whether right or wrong, I am a democrat, and not by necessity or on a point of convenience, but by conviction. I not only believe that the majority of the citizens in any civilized, educated, homogeneous community must rule, and will rule, but that they ought to rule. I should hold this view even if I could be convinced, a project of which I doubt the possibility, that any other principle of government could produce as good results as the democratic principle.

If I am asked what I mean by democracy, I mean government by the will of the majority legally and justly expressed.

Here perhaps it is necessary to say that there is no catch in the words "legally and justly expressed." I use these words not to hide any dodge for giving with one hand and taking back with the other, as has happened, I admit, in many constitutions, old and new. For example, the extremists among the Socialists and Communists are anxious to introduce into their alleged popular systems methods of minority rule which render them oligarchies instead of democracies.

The history of revolutions shows us again and again how parties and sections claim to be the democracy and to speak with the voice of the majority when they are in truth a small minority.

Those who claim to be the majority must prove it, not by force, or cunning, or through the direct action of a powerful group, but by getting the assent of the larger share of the population, and by getting it through laws arranged to prevent fraud, violence, or corruption at the polls. They must get it, that is, through a system like our own, which, by the ballot, the Corrupt Practices Act, and the other Acts controlling elections, effectually secures freedom to the voter to mark his paper as he likes, and not as somebody tells him to mark it. That is what I mean when I use the formula, "The will of the majority legally and justly expressed."

It is because I believe in the rule of the majority that I am in favour of the Referendum. Owing to the peculiar working of representative government, especially when under the influence of the Party system, we cannot be certain that the will of the majority will prevail through representation without the introduction of the Referendum to give the final word.

“What it comes to, then,” some cynic will exclaim, “is that you are in favour of making the odd man king?” Certainly—though it is far more likely to be the odd million. Even if I am pushed into an argumentative corner by this bogey, I am not going to be in the least frightened by him. The unknown odd man does not alarm me half as much as the crazy or dipsomaniac monarch produced by a system of hereditary autocracy; as the corrupt political boss produced by the clever manipulation of the group system in a popular assembly; as the cunning and yet panic-stricken head of a Soviet minority who sees that he can only keep his power by killing and cruelty. That dreadful intimidation is not only founded on “a heavy civil war”; it is maintained by a daily diet of the warm blood of the brave and the innocent.

There are risks in all government, but if I have got to choose between the risks of the Czar, a

Tammany Hall Boss, Lenin and the unknown odd man, I choose the odd man all the time.

After all, though half the country may be against him, he has got the other half of the country at his back. That makes him respectable if vague. Anyway, no one can get at him and flatter him and cajole him, because nobody knows who he is. He is in truth the Unknown Warrior of Democracy.

## CHAPTER I

### WHAT IS THE REFERENDUM?

#### I

WHAT is the Referendum or Poll of the People? Not, as is sometimes represented, a new-fangled dodge or highly intricate piece of constitutional metaphysics or political philosophy, but the application to the political constitution of the very reasonable and convenient plan under which all *agents* work. When during negotiations, or other business conducted by an agent, some new or difficult point arises not covered by the original instructions, the agent is very apt to say, "Well, it seems a fairly sound proposal, but I am sorry to say it is quite outside my instructions. I shall have to refer this to my principal and get his views on the matter."

That is all that the Referendum is in theory or in practice. In the old days of the Swiss Republic the delegates from the different free and sovereign States which made up the Swiss Confederation used, when new or specially important proposals were made to the federal body, to say, "This is a matter which we must refer back to the communities that sent us. We cannot commit them without their

consent." The process in law-Latin jargon was called *Ad Referendum*. But though the Swiss first systematized the use of the Referendum or Poll of the People in regard to matters referred back for their endorsement or sanction, they had no monopoly of it. The Poll of the People lay sequestered in the hearts, if not in the constitutions, of most of the Northern peoples. It was always liable to be revived under one alias or another. There was always at the back of men's minds the feeling that the supreme and final word ought to be said by the people themselves, or rather, since no community was ever unanimous, by the majority of the people. This belief that there are certain things on which the whole people should decide is always cropping up in one form or another in the histories of the various European States. You have signs of it in the claim of the early English kingdoms to elect their monarch—a claim which even William the Conqueror did not altogether like to ignore. It made him seek endorsement by the people of England at his coronation, and when the anti-Feudal oath of loyalty was sworn to him on Salisbury Plain—the master oath which made every Englishman directly his man, and not merely his man's man. There are traces of the institution in the matter of royal acclamation in other States, and still plainer vestiges in the constitution of mediæval



towns, and especially of the mediæval republics of Italy. The shadow of the Poll of the People even invaded the sacred precincts of the Vatican. A claim was made, if I remember rightly, by the Roman populace to help choose the successor of St. Peter.

The old embers were blown into flame during the French Revolution by rhetorical appeals to Roman and other classical practice. When Napoleon finally Latinized the French constitution, first in the Consulate and then in the Empire, the plan of referring matters to a Poll of the People, though strangely camouflaged and altered, was openly adopted. The Plebiscite again was nominally, if not actually, the constitutional sheet-anchor of his nephew, Napoleon the Third. Curiously enough, this pseudo-classicism had for the Northern countries a kind of ancestral backing in a statement made by Tacitus in his *Germania*. He tells us that the *Principes*, or magnates of the Teutons, decided minor questions, but that all very great matters were settled by the whole people. This is a striking example of the acorn containing the oak in miniature. Those who advocate the Referendum desire that in small or unimportant matters the magnates, or elected representatives of the people, should prevail, but that the greatest things should always be referred to a Poll of the People, for veto or

acceptance, according as the will of the majority shall decide.

Though Switzerland is supposed to be the home of the Referendum, men of English blood may proudly claim that the Poll of the People, for any large and non-urban community, first took practical and definite shape in England and in America. The moment the royal power was destroyed and the House of Lords abolished, the people of England, as represented by the Army of the Commonwealth, the glorious buff-coated officers and privates of the best and bravest army that the world ever saw till our own day, demanded that great constitutional changes should not be carried out without the will of the people being sought. With an instinct for constitutional safety which sounds almost uncanny, *The Council of the Army*, that is, the representatives of the soldiers, realized that single-chamber government such as that of the Long Parliament placed the country at the mercy of a succession of log-rolling members of the House of Commons. There was no restraint anywhere upon their powers. The veto power of the King and of the House of Lords, though it might have been objectionable from many points of view, at any rate gave a certain amount of stability. With these powers abolished, the whole liberties of the country lay at the mercy of the House of Commons.

The soldiers of the Commonwealth, to put it bluntly, thought that was "not good enough." They asked for security, at any rate, in what they called "fundamentals"—*i.e.*, great constitutional matters. How near they got actually to demanding the Poll of the People can be seen in the Agreement of the People Bill, which was put forth by the Army.

The framers of the Agreement saw that it was not well to have the "fundamentals of government," as they called them, always at the mercy of a scratch majority in the Commons. Therefore in the very beginning of their Agreement they laid it down that power belonged to the people themselves. The second and enlarged version of "The Agreement of the People," to be found in Gardiner's *Documents of the Puritan Revolution*, contains the following passage:

"Now to prevent misunderstanding of our intentions therein, we have but this to say, that we are far from such a spirit, as positively to impose our private apprehensions upon the judgments of any in the kingdom, that have not forfeited their freedom, and much less upon yourselves, neither are we apt in anywise to insist upon circumstantial things, or aught that is not evidently fundamental to that public interest for which you and we have declared and engaged, but in this tender of it, we humbly desire: (1) That, whether it shall be fully

approved by you and received by the people, as it now stands or not, it may yet remain on record, before you, a perpetual witness of our real intentions and utmost endeavours for a sound and equal settlement, and as a testimony whereby all men may be assured what we are willing and ready to acquiesce in ; and their jealousies satisfied or mouths stopt, who are apt to think or say, we have no bottom. (2) That, with all the expedition which the immediate and pressing great affairs admit, it may receive your most mature consideration and resolutions upon it ; not that we desire either the whole, or what you shall like in it, should be by your authority imposed as a law upon the kingdom, for so it would lose the intended nature of an ‘Agreement of the People’; but that, so far as it concurs with your own judgments, it may receive your seal of approbation only. (3) *That, according to the method propounded therein, it may be tendered to the people in all parts, to be subscribed by those that are willing, as petitions and other things of a voluntary nature are, and that, in the meanwhile, the ascertaining of these circumstances, which are referred to Commissioners in the several counties, may be proceeded upon in a way preparatory to the practice of it ; and if upon the account of Subscriptions (to be returned by those Commissioners in April next) there appears a general or common reception of it amongst the people, or by the well-affected of them, and such as are not obnoxious for delinquency, it may then take place and effect, according to the tenour and substance of it.”*

It is obvious from the words italicized that what the framers of the Agreement meant by "Subscriptions" was a poll of those who were entitled at that time to the franchise.

The "Appeal to the English Nation," another product of the great constitutional controversy of that epoch, contains a reference, clear enough though somewhat indirect, to the Referendum :

"If any shall inquire why we should desire to joyne in an agreement with the people, to declare these to be our native Rights, and not rather to petition to the Parliament for them ; the reason is evident. No Act of Parliament is or can be unalterable, and so cannot be sufficient security to save you or us harmlesse, from what another Parliament may determine, if it should be corrupted ; and besides Parliaments are to receive the extent of their power and trust from those that betrust them ; *and therefore the People are to declare what their power and trust is, which is the intent of this Agreement.*"

The same idea crops up in the debates of the Council of the Army. For example, we find in a speech of Colonel Ireton, in regard to the need for some restraint upon the unlimited powers of the Commons, these words : "It [the restraint proposed by him] gives the negative voice to the people ; no laws can be made without their consent." The "negative voice" secured to the people was in

effect the right to veto Acts of Parliament at a Referendum. The Referendum, too, must surely have been in Cromwell's mind when he said: "If I could see a visible presence of the people either by subscriptions or number I should be satisfied with it; for in the government of nations that which is to be looked after is the affections of the people." "Affections" here means the desires and will rather than the love of the people. "Subscriptions" meant, in the way used by Cromwell, the voter repairing to his county town and there putting down his name as for or against some proposal for altering the constitution.

Though the men of the Army did not get their way, and what Walt Whitman called "the insolence of Elected Persons" prevailed, it is plain that what the buff-coated soldiers were asking for was the essential spirit of the Referendum. That spirit demands that the people shall have a definite right of veto upon the doings and acts of their representatives on the great fundamental questions that affect the State.

Though the idea of the Poll of the People appeared to have been defeated by the Long Parliament, in truth it only remained dormant. It revived when some hundred and twenty years later it became necessary to readjust the political relations under which the men of the American

Colonies were to live. As soon as the War of Independence was over and the great work of founding the Federal Constitution had been carried out, the various States of the Union began to turn their attention to their own constitutions. Here an amount of interesting constitutional exploration was accomplished, of which, as a rule, very little is known in England, and I hope I shall not be regarded as presumptuous if I say not very much in America. We have all read *The Federalist* with admiration, and regard Alexander Hamilton as one of the greatest of English-speaking political philosophers. We are, however, apt to forget the discussions which were going on during the period from, say, 1790 to 1820 throughout the United States. Though they did not call it the Referendum or the Poll of the People, the States seem in a most curious way to have acted on the rule, "When in doubt ask the People." Like the men of the Cromwellian Army, they realized that there ought to be a veto somewhere in the constitution. If not, Boss Log-Roller would be King. In the old colonial legislation the veto was placed in the hands of the Governor, and on the whole the plan worked well. The Governor, as a rule, did not look out for trouble with his Assembly and assented to most of their Acts, but there always remained the possibility of his

vetoing a Bill if it went too far, and especially if it went to the aggrandizement of the Assembly over those who had elected it. Anything in the nature of usurpation of power by the representatives was likely to be checked. Therefore, though the colonists in theory did not like the veto of the Governor, they—like the English people during the Commonwealth—felt that some veto power ought to be provided in their constitutions. The way in which the people of the various States turned to the Referendum for help is very well described in an interesting little book, *The Referendum among the English. A Manual of "Submissions to the People" in the American States*.\* The work in question was written by a well-known American barrister, Colonel S. R. Honey. I may perhaps quote from an introduction which I contributed to the manual, since it shortly summarizes the author's contentions:

"The four New England States of Massachusetts, New Hampshire, Connecticut, and Rhode Island early adopted the principle of the Referendum. For example, Massachusetts in 1778 submitted its first draft constitution for ratification or rejection by the direct vote of the people at the polls. Thus a hundred and thirty years ago we get a body of people of purely English origin making use of the Poll of the People. In this action Massachusetts was followed

\* Macmillan and Co. 1912.



by New Hampshire in 1783, by Connecticut in 1818, and by Rhode Island in 1842. At some time or other, except in Delaware, this example has been followed by the rest of the original States of the Union. Indeed, it may be said to have been a long-established principle in the Union that 'constitutional changes should be made only by or through the direct vote of the people.' Rhode Island was in a sense late in submitting its constitution to the people. But its people had clearly no doubt in regard to the principle. Indeed, it may be said that the smallest of the New England States was actually the pioneer in this matter. In 1641 its people declared that its 'Government is a Democracie in favour of our Prince,' and that its 'freemen orderly assembled have the power to make or constitute Just Laws by which they will be regulated.' "

I may supplement this by noting a remark made by Colonel Honey as to how it became practically a universal custom to include the Referendum in the constitution of any new State that entered the Union :

" Each of these new States entered the Federal Union with its own written constitution as a co-equal partner of all the other States. Every such constitution contained a recognition of the principle that *constitutional changes should be made only by or through the direct vote of the people.*"

## II

I cannot find space to quote the detailed story of the various polls taken in the different States of America, a list of which is contained in Colonel Honey's book, but it is interesting to notice that the first of these polls was taken by Alabama in 1819. I can only summarize the result by saying that the people have now in practically every State of the Union a right of veto over the work of their representatives in all matters of great legislative importance. That is what those who want the Poll of the People introduced into this country desire to see here.

Here I may fitly say in parenthesis that what I am advocating is the Referendum and not the Initiative. I think I may also say without fear of contradiction that this is also what the ordinary sane Englishman who thinks on these matters desires. What the Englishman requires first in the case of a proposed change in the constitution or the law is to see the proposal thoroughly discussed in Parliament, by parliamentary experts, and thrown into the form of a Bill. But he is by no means convinced that this process will always give him exactly what he wants. He knows that under the Party system democracy works in very strange ways and performs very great wonders. He knows, that

is, that in a representative body it is very often not the will of the majority which prevails but the will of the minority. A certain Party may command a majority of the House, and that Party wants to remain in power. But inside the Party majority there is a determined and wilful minority which says: "We will support the Party and keep it in power if we are satisfied with a particular Bill, but not unless." "Sorry," say the leaders of the Party, "we cannot do this. Such a Bill is opposed to the wishes of the majority of our Party, and, we believe, of the people." "Very well, then," say the minority in the Party, "if that is so we shall vote against you, and you will be turned out of office." If the majority feel that the minority are quite fanatical enough to carry out their threats, and if they value office above all things, they will yield to the minority and will use the appeal to Party loyalty to pass a Bill or an amendment which is contrary to the wishes of the majority of the Party, of the majority of the House as a whole, and of the majority of the people. Hence a corrective is required. It is to be found in the Referendum.

Therefore the citizen who thinks matters out for himself and is not stupefied by Party demands the right of veto. He does not want legislation by a popular clamour, but he wants to get rid of this imminent danger of minority legislation by the

right to demand, not for every paltry measure, but for big measures, a Poll of the People. *He wants, that is, to place the veto power in the hands of those best able to use it, and who have the most right to use it—the People themselves.*

The combination of representative institutions with pure democracy is not only necessary but sound. Though the people as a whole must say the final word on the really great things, the actual management of the affairs of the country must be conducted by the few. With the veto of the majority superadded we get not, of course, a perfect system, for nothing is perfect in human institutions, but as good a political system as is possible.

In the House of Commons we see legislative projects put under the microscope and turned inside out by the brains of experts. At the same time we are protected from log-rolling Members of Parliament. And here I may quote the words of a French-speaking Swiss in regard to the Referendum. The effect of the Referendum, he tell us, is to be found not only in the list of Acts which were vetoed on Referendum, but still more in the phantom pile of Bills which were never even introduced owing to the existence of the Referendum. The people who wanted to introduce them knew that if they had been introduced into the Federal Assembly there would have been an instant demand

that they should be referred to the people, where they would have met with the treatment they deserved.

Though I deal later with the working of the Referendum in Switzerland, I must mention here one or two facts of Swiss experience which are very memorable. It is often said that it would be very dangerous to take a popular vote upon technical matters or on legislative proposals which demand great sacrifices of the people, or, again, upon matters of high seriousness where the country ought to accept the wise leading of their better-instructed representatives. In view of this contention, the following fact deserves consideration. Some ten or twelve years ago the Swiss Government decided that it was necessary for the safety of the Republic to double the obligations imposed on the male citizens in the matter of national defence. It seemed, however, a rather hopeless task to get a peasant people to consent to a system of training which would compel them to leave their farms and to become soldiers, not only for a considerable period as recruits, but also for a longish period every year. No wonder, then, that the Swiss Socialists, who were very much against the proposal for increasing the Swiss Army, chuckled with delight over the proposal. They had only to insist on it being sent to Referendum, for they felt perfectly sure that the

proposal would be rejected. It did go to Referendum, and was triumphantly carried by a large majority. Though the Swiss people, voting as a whole, are notoriously inclined to veto legislation, they accepted the new Military Service Law as essential to the welfare of the nation. Here I may point out that the accusation that the people always say "No" to any legislation put before them is only apparently true. The fairer way of putting it is that reference to the people is only insisted upon in large and doubtful questions. When the legislation proposed is popular, those opposed to it are usually silent. They do not want to get a rebuff by insisting upon a poll of the voters.

### III

I must try to meet the chief arguments commonly used against the Poll of the People. The first objection, and the one most often used, is based upon a confusion between the Referendum and that perfectly different thing, the Initiative. The Initiative is not a right of veto claimed and used by the people over the legislative projects of their representatives, but a power employed by the people themselves to introduce and pass laws over the heads of their representatives. Under the Initiative a certain number of people may frame a

Bill for themselves and send it to the Executive with the demand that it shall be put before the people and a vote taken upon it. In one or two cases in Switzerland laws have been passed by the Initiative, but on the whole it is quite correct to say that it is seldom used. The arguments against it are very strong. Under the Initiative you do not get that Committee stage for legislation, the stage in which trained advocates, critics, and lawyers debate the clauses of the Bill and strive to render it workable in practice as well as sound in theory. The Initiative is an encouragement to crude legislative schemes. In America, again, though the Initiative was introduced one hundred years ago into the constitution of certain States, I believe I am right in saying that it has been little used except in Oregon. The fact is, the Initiative, though it may very well suit a small community like, say, the smallest Canton of Switzerland or one of the least populous American States, does not suit a great and complicated modern community with a vast number of laws already on the Statute Book which will have to be brought into harmony with the new proposal. In any case, the Initiative is not the Referendum. Therefore, advocates of the Referendum are not called upon in any way to defend the Initiative or to meet arguments which are applicable only to that institution. In my own

case the Initiative is anathema, while I regard the Referendum as the most valuable piece of political machinery, and I absolutely refuse to be saddled with one because I want the other. If my reason for what is sometimes called picking and choosing is asked, I can only say I think one system bad and the other good. I like the Referendum because it prevents the will of the minority prevailing in legislation through a use of log-rolling.

#### IV

Another objection often raised to the Referendum is that the power of Parliament, and especially of the House of Commons, would be weakened by the popular right of veto. I hold an exactly contrary view. I believe that the House of Commons greatly wants strengthening, and I further believe that the introduction of the popular veto is the best way to produce this much-to-be-desired result. The matter is so important that I need offer no apology for dealing with it at length and for trying to show (1) that the House of Commons is suffering from a serious disconsideration, and (2) that the best cure for an ill so grave is the Referendum.

The standard of ability and of patriotic desire in the House of Commons during the past seven or eight years has been quite as high as in the past.



And yet this disconsideration, I had almost said this sense of acute dislike for the House of Commons, has been visibly increasing year by year.

What makes this the more remarkable and the more menacing is the fact that the House of Commons has never been more absolute in the constitution. We may dislike the House of Commons, and the term "politician" may have become, as it unfortunately has, a term of reproach, and yet the House of Commons is now the sole source of political power. It may be a bad lever with which to move our universe, but it is the only one which we possess. It is true that the Cabinet, or rather, let us say, a committee chosen by the majority of the House of Commons, largely usurps the power of the House of Commons. At any moment, however, the House of Commons can destroy the Government by an adverse vote.

The House of Commons, except for the delay enjoined by the Parliament Act, which indeed merely gives the House of Commons an excuse for retaining power without an appeal to the people, is now absolutely supreme. To put it another way, the power of the House of Lords has shrunk to the power of delaying legislation for two years. That is the maximum of its legal and constitutional authority, though no doubt, through the ability of its members and the independence shown in its

debates, it exercises a greater influence on public opinion, an influence comparable with that exercised, or I fear perhaps I ought to say that was once exercised, by the Press. Truly the situation is a strange one. The House of Commons is legally supreme in the land ; it has eaten up and destroyed all competitors and become the sole depository of political power under the constitution ; and yet, instead of earning the respect which one might imagine would belong to such absolutism, it is suffering from a want of confidence such as has never before attached to it in its history. How has this come about ? Why has its supremacy made it less, not more, respected by the nation at large ?

The answer to the question is, I believe, to be found in the remarkable dissertation on political power contained in one of Disraeli's novels. In the thirteenth chapter of *Coningsby* Sidonia puts his finger upon the very point with which I am dealing, and affords an answer to the question I have just raised.

“ You will observe one curious trait (said Sidonia to Coningsby) in the history of this country : the depository of power is always unpopular ; all combine against it ; it always falls. Power was deposited in the great Barons ; the Church, using the King for its instrument, crushed the great Barons. Power was deposited in the Church ; the King, bribing the Parliament, plundered the Church. Power was

deposited in the King; the Parliament, using the People, beheaded the King, expelled the King, changed the King, and, finally, for a King substituted an administrative officer. For one hundred and fifty years Power has been deposited in the Parliament, and for the last sixty or seventy years it has been becoming more and more unpopular. In 1830 it was endeavoured by a reconstruction to regain the popular affection; but, in truth, as the Parliament then only made itself more powerful, it has only become more odious. As we see that the Barons, the Church, the King, have in turn devoured each other, and that the Parliament, the last devourer, remains, it is impossible to resist the impression that this body also is doomed to be destroyed; and he is a sagacious statesman who may detect in what form and in what quarter the great consumer will arise."

In spite of the over-statement, or at any rate over-emphasis, and the pomp of Lord Beaconsfield's rhetoric, the essential part of Sidonia's speech is perfectly true. The English people have never been sympathetic towards the depository of power. They have always disliked it, and always will dislike it. The possession of power is not an attribute which is to them endearing, or even awe-inspiring. Rather it is a cause of suspicion, an instigator to resistance. In remarking this instinctive jealousy of power, we stumble indeed against the fact which Napoleon noted when, with

an acumen which one feels he had hardly the right to possess, he declared that the difference between the English and the French was that the French cared a great deal for equality and nothing for liberty, while the English were indifferent to equality but valued liberty above everything else.

It is because of this intense feeling in regard to his liberty of action that the Englishman is so consistently jealous of the wielder of supreme power. He is always fearful lest his freedom should be infringed. To tell him that it will only be infringed for his good leaves him not merely cold but stiff with rage.

It is true that for any practical purpose and in any great emergency he is the best-disciplined man in the world, and accepts without a murmur the strictest of military discipline. Still, to make himself really obedient, to make himself the really splendid soldier that he is, he insists on it being made clear to all that his militarism is only "local and temporary." While he is on the job he has not the slightest objection to taking orders and executing them with what seems almost like a blind confidence. In his heart there is always that predominant quality that Dr. Johnson so finely analyses in his "Essay on the English Common Soldier." Dr. Johnson describes this quality in his heaviest "Barrow" style as "a kind of plebeian

magnanimity," or again, as a "neglect of subordination."

My present object, however, is not to emphasize Lord Beaconsfield's prescience, but to suggest that the remedy is to be found in the Poll of the People. What we have got to find is something that will take away from the House of Commons that apparent absolutism which makes it unpopular. We want to find a lightning-conductor which will deflect the national jealousy and leave Parliament uninjured in a political thunderstorm. Like most things that are worth having in this world, the remedy is a very simple one, the lodging of a power of veto in the hands of the people themselves.

The maladies of democracy should be cured on the principle of *similia similibus*. In moments of social and political confusion the chief danger we have got to prepare against is the danger of the minority seizing power, and, having seized it, maintaining their power by violence and bloodshed.

In order to put down minority rule and to maintain the rule of the majority no instrument is more potent than that of the veto placed in the hands of the people themselves. By means of the Poll of the People we reach the final source of authority and hear the word which we can all

obey and which we all ought to obey, whether we agree or not, until we can get it altered, not by force or by trickery, but by persuasion and conversion.

“But,” it may be urged, “you are surely not prepared to accept the will of a tyrant merely because it is a majority tyrant?” I am prepared to do so. In my opinion it is much less difficult and much less of an evil to obey the will of the majority when it is wrong, than to obey the will of the minority when it is wrong. Therefore, the will of the majority legally and constitutionally expressed ought, as I have just said, to be, and indeed must be, obeyed by all good citizens until they can get it changed. That there are theoretic exceptions I admit. As Burke has told us, “Nothing absolute can be affirmed on any moral or political subject,” and therefore nothing absolute can be said even on this matter. For example, if a majority of the people were to decide to introduce slavery into this country, I should hold that the social bonds had been dissolved altogether and that the right of resistance, even to a majority, had arisen. The State by its evil act has discharged me of my allegiance. That, however, is theory. In practice we must and we ought to obey the will of the majority. Therefore let us provide proper means for ascertaining it, and let us beware

of the appalling danger of treating the will of a noisy minority as the will of the majority.

In order that people may realize what is the method by which a Poll of the People is carried out, I append an example of a Referendum voting paper.

PROPOSED BALLOT PAPER FOR THE UNITED  
KINGDOM.

BALLOT PAPER.		
POLL OF THE PEOPLE OF THE UNITED KINGDOM, HELD ..... JANUARY, 1921.		
<p>A Bill for (here insert short title of Bill) ..... having been passed by Parlia- ment is referred to a Poll of the People. Those in favour of that Bill, place a cross (X) in the column headed "Yes." Those against, place a cross (X) in the column headed "No."</p>	YES.	NO.

Now for a much-needed caveat. The Referendum should never be used in answer to abstract questions, as, "Are you in favour of a monarchy?" or an Emperor, or a War, or a Peace, or so forth. Those are questions that nobody can or ought to answer in the abstract. If a man of sense is asked, "Are you in favour of a monarchy?" he naturally asks, "What kind of a monarchy do you mean?" When you have got a definite statement of that kind you can say whether on the whole you are in favour of it or not, but you cannot give that answer to a purely abstract proposition.

Therefore a Poll of the People ought never to be taken except in regard to a definite Bill in which the proposal to make a new law or to alter an existing law is set forth in the words of the proposed statute as it left the Legislature. Granted this, the form which the Poll of the People must always take is, "Are you or are you not in favour of such and such a Bill (*i.e.*, the Bill already discussed in Parliament) being put into operation?"

Now comes the objection always made by the opponents of the Referendum, "The ordinary man will never take the trouble to read the Bill. How then can he judge whether it is a good Bill or not?" My answer is that the majority of Members of Parliament usually do not take the trouble to read the Bills about which they vote. They go, instead, by the opinions of other men. Yet they find no difficulty in voting for or against the third reading of a Bill, and confidently endorse or condemn a whole measure or a particular clause contained in it. Why should not the elector be able to do what his representative is always doing in the House of Commons?

I must add, I am amazed when I hear people talk about the impossibility of voting for a complicated measure. Surely it is quite as difficult, or rather much more difficult, to vote for a complicated man like, say for example, Mr. Winston



Churchill, and, still more, for a complicated political programme like that of the Liberal or the Unionist or the Labour Party. Yet this is the kind of thing we all have to do at General or By-Elections.

Once more, if a man can vote at an election he can vote at a Poll of the People.

## CHAPTER II

### HOW TO WORK THE POLL OF THE PEOPLE

MANY persons who are interested in the Poll of the People, in spite of the fact that it is used so freely and easily in Switzerland and in every State in the United States, and also in Australia and Canada, seem to think that there are somehow insuperable difficulties to applying it in Great Britain. We often hear such expressions as, "It would not fit into our constitution"; "You could not get people to understand it here," and so forth. As a matter of fact, it would be the simplest thing in the world to establish it in the United Kingdom. I therefore propose to give (1) a short description of Lord Balfour of Burleigh's "Reference to the People" Bill,\* and (2) a further criticism of the arguments used against the Poll of the People.

#### I. LORD BALFOUR OF BURLEIGH'S BILL (1911).

This Bill, drafted for, and in co-operation with, me by Mr. Pember, a distinguished barrister, now the Warden of All Souls, Oxford, owed no little of its ability to meet the criticism of

\* See the next chapter for the full text.

its opponents to the experience and judgment of its distinguished introducer. Owing to Lord Balfour of Burleigh's speech on the introduction of the Bill the measure secured a better welcome and more general support for the Bill than was expected from the Peers. The main features of the Bill were well described. It was provided in the Bill that electors would vote under all the safeguards of the Ballot Act and the Corrupt Practices Act, so far as these enactments apply, exactly as they vote now at a General Election. The only difference would be that, instead of voting for Mr. Smith or Mr. Jones, they would vote "Yes" or "No" as to whether a particular Bill which has already been discussed and carried in Parliament—to be called a "carried Bill"—should or should not come into operation—*i.e.*, be presented for the Royal Assent.

That is simple and clear enough, and equally simple and clear are the occasions on which a Poll of the People would be resorted to. The first object is to solve deadlocks between the two Houses of Parliament. If the two Houses cannot agree upon a Bill, then the Bill *in the shape in which it was finally agreed to by the House of Commons* is to be presented to the popular veto. If the people vote No—*i.e.*, veto it—the Bill drops. If they vote Yes—*i.e.*, accept it—the Bill becomes law. But acceptance must not be merely by a majority of

one, but by a majority of at least two per cent. of the negative vote.

It will thus be seen that the predominant power of the House of Commons in legislation is preserved. All that the Lords have a right to do, under Lord Balfour of Burleigh's Bill, is, in cases where they cannot see their way to agree with the House of Commons, to give the people an opportunity of vetoing the Commons Bill if they are so disposed. In other words, the Commons can legislate over the heads of the House of Lords, but only if they receive the assent of the people.

This use of the function of the House of Lords. I may say in passing, is exactly consonant with the evolutionary development of the constitution. For the last fifty years the Lords have not claimed any greater power than this. There has, however, been wanting the proper machinery for putting into operation the Lords' demand that the electors—the masters of the predominant as well as the subordinate partner in the Legislature—shall decide between them when they differ.

The Bill meets, and meets, I think, very properly, the complaint that under the working of our Party system only Liberal Bills would in fact be referred to the people under a Deadlock Solution Bill. Accordingly Lord Balfour of Burleigh's Bill proposed that a minority of 200 members of the House of

Commons should be able, whenever they thought fit, to petition the Crown that a Bill shall not receive the Royal Assent until it had been referred to a poll of the electors. Since only a powerful Opposition can, in fact, command 200 votes, there is no likelihood under this clause of there being frivolous references to the people by small minorities.

The Leader of the Opposition again is not likely to demand a reference unless he is pretty sure of the result. No Party cares to risk unnecessary defeats. Another automatic check against the frivolous use of the Poll of the People is provided by the fact that a Bill once accepted at a reference can only be repealed by a popular vote. Party leaders would in most cases prefer to wait for repeal or amendment under the ordinary conditions.

I may point out here that Parliament has already sanctioned the application of the Referendum to disagreement between the two Houses of a British Legislature. In the Commonwealth of Australia Constitution Act (63 and 64 Vict., c. 8) it is enacted by clause 128 that alterations in the constitution shall be made as follows :

“The proposed law for the alteration thereof [*i.e.*, of the constitution] must be passed by an absolute majority of each House of the Parliament.

and not less than two nor more than six months after its passage through both Houses the proposed law shall be submitted in each State to the electors qualified to vote for the election of members of the House of Representatives.

“But if either House passes any such proposed law by an absolute majority, and the other House rejects or fails to pass it or passes it with any amendment to which the first-mentioned House will not agree, and if after an interval of three months the first-mentioned House in the same or the next session again passes the proposed law by an absolute majority with or without any amendment which has been made or agreed to by the other House, and such other House rejects or fails to pass it or passes it with any amendment to which the first-mentioned House will not agree, the Governor-General may submit the proposed law as last proposed by the first-mentioned House, and either with or without any amendments subsequently agreed to by both Houses, to the electors in each State qualified to vote for the election of the House of Representatives.

“When a proposed law is submitted to the electors the vote shall be taken in such manner as the Parliament prescribes. But until the qualification of electors of members of the House of Representatives becomes uniform throughout the Commonwealth, only one-half the electors voting for and against the proposed law shall be counted in any State in which adult suffrage prevails.”

It will be seen from the above that not only is the Referendum automatically provided for amendments to the constitution, but that if either House refuses to agree to a proposed amendment, the Governor-General (acting, of course, on the advice of the Ministry in power) may submit the proposed law, as last proposed by the House which initiated the measure, with or without amendments subsequently agreed to by both Houses, to a Poll of the People.

Taking advantage of this precedent, it would be quite easy to devise a scheme under which legislation upon which the two Houses of the Imperial Parliament could not agree should be submitted to a Poll of the People, "Yes" or "No." As important legislation is almost always initiated in the House of Commons, what would happen in practice would be as follows: If the Government of the day were unable to get the House of Lords to agree to the final form in which an Act was sent up to them—that is, after the Commons had refused to agree to the Lords' amendments and the Lords had insisted on maintaining those amendments, the Act, in the shape last submitted by the Commons to the Lords, would be referred to the people. Again, if that was thought simpler and in order to save debate, either House might add to a Bill to which they objected or which they thought ought to be

submitted to the people, a Referendum clause, to the effect that "This Act shall not come into operation till the decision of the people shall be taken thereon according to the terms of The Poll of the People Act."

## II. THE OFFICIAL LIBERAL OBJECTIONS.

Lord Grey of Fallodon once asked in the electoral campaign of 1910, in connection with Mr. Balfour's promise to submit Tariff Reform to a Referendum: "Did that mean simply sending out a number of postcards asking whether people were in favour of some general unexplained proposition of Tariff Reform, or did it mean submission of a Tariff Budget with all the taxes in it? Until the Leader of the Opposition answered that question the Liberals could not tell what the offer meant, or whether it was worth anything at all." Mr. Balfour did not commit himself absolutely to the exact form of reference, but he never intended to submit an abstract question or questions to the electorate in regard to Tariff Reform. If and when the matter comes to be thrashed out in detail, it will be found that the only practical plan here, as in the case of other references, will be to put a definite specific proposal before the country, and to ask whether it shall come into operation or not. The only difficulty in the fiscal question is the difficulty



that taxes are, by their nature, partly executive acts, and that there might be administrative difficulties in submitting the whole of a Budget. A very little thought, however, will show how this objection can be got over. The reasonable plan would be to refer only new taxes. Let us assume a Tariff Reform Government in power. They would, of course, have to continue the income-tax and the death duties and the existing taxes on commodities. In addition they would propose a series of new taxes on commodities. These new taxes, in the form of a schedule to the Finance Act, could perfectly well be submitted to the people without any administrative difficulties. The people would be asked, as were the Swiss people not many years ago, whether they were in favour of the new taxes on commodities set forth in the schedule to the Finance Act of 19— coming into operation. That is a question to which the electors could quite easily give a “ Yes ” or “ No ” answer.

Another objection often made to the Poll of the People is that if it went against a Government Bill, the Government would have to resign. In order to enforce Party discipline, Governments are very apt to say that unless they can get this or that measure through Parliament or through the House of Commons, they will not be responsible for carrying on the administration. Yet, as a matter

of fact, we all know that Governments are constantly defeated, directly or indirectly, and do not resign. Bills introduced by the Government are either not proceeded with, or altered beyond recognition, because they find that the House of Commons will not pass them, which is in principle equivalent to rejection. Yet they do not on that ground resign, but often "carry on" for two or three years. In truth, Governments only resign when they find that they have lost their majority in the House of Commons for general business, and can no longer command victory on the question of general confidence. The Government is not merely a machine for manufacturing laws but is appointed to carry on the executive work of the nation. As a rule, when a Government Bill was rejected by a Poll of the People, the Government would not resign, for the very good reason that they still commanded a majority in the House of Commons, which majority did not wish for a Dissolution. No doubt there might be cases in which a Government would feel that a measure put before the people was essential to their executive work, and that if they could not pass it they must leave office. For example, we can imagine a case in which a Government might ask for some strengthening of the law for dealing with outbreaks of crime or disorder. If such a Bill were referred

and rejected, the Government would very likely say: "We have told you that we cannot keep order without these further powers. As you will not give them to us, we will no longer be responsible for the administration." Such cases, however, would be quite exceptional. A Government beaten at a reference would generally say: "We have appealed to the master on a particular point and he has decided against us, but that is no reason why we should not go on conducting the business of the country."

Yet a further objection which has been made to the Referendum is that it would injure the character of Parliament. I believe that it would do just the opposite. In many cases it would set the electors free to vote for the better of two candidates, and thus make it far more necessary than it is now for the Party caucuses to select men of good standing. At present the ordinary elector is often faced by an odious dilemma. Candidate A is a man thoroughly worthy to represent the constituency on personal grounds; but the voter who is considering his claims detests two or three of the chief measures to which the Party of Candidate A is pledged. Candidate B, on the other hand, is sound on the matter of these legislative proposals; but he has gained his selection at the hands of the Party caucus by unworthy means, or at any rate is not

a candidate for whom a self-respecting elector will care to vote. At present the elector, if he belongs to the Party of Candidate B, or is of his political way of thinking, is obliged to vote for B because it is his only chance of stopping the injurious legislative proposals to which A has committed himself. In a State, however, where the right of veto over legislation is placed in the hands of the people, the voter in a case such as we have named may, as a lesson to his Party not to choose candidates of doubtful character, vote for A. He knows that through the Poll of the People he will have a further and a better opportunity of stopping the injurious proposals to which A is pledged. No doubt such cases would not occur very often, and no doubt, also, the Party ties are so strong that they would not very often operate in the way we have described. At the same time, we cannot but think that the rigour of Party would be relaxed in such circumstances. At present the Party caucuses know very well that people of certain political views must vote for the man they select, whoever he is, and this tends to make them careless, or even sometimes corrupt, in their selections. If they could not feel that they had the electors who favoured their views in a cleft stick, a great deal of the malignant power of the caucus would be got rid of.

Lastly, there is the objection as to the cost of a Poll of the People—an objection about which an immense deal of nonsense has been talked. The only essential expense of a Referendum to the community is that involved in printing the voting-papers and proclamations, and in paying the officials and polling-clerks who preside in the polling-stations and the persons who count the votes. Beyond the money payments required for these, there are no expenses which will fall on the community. The huge sums paraded by Mr. Lloyd George and others are of course reached by adding up all the money flung away at election times by individual candidates in close competition with each other. There is not the least fear, however, that these sums would be spent at a Poll of the People. Men spend much more freely when they are trying to gratify personal ambition to get into Parliament than when they are dealing with a specific legislative proposal. No doubt the two Parties would spend something on holding meetings, and so forth, but it would be on a very much reduced scale. In any case, such expenditure would not be obligatory, but at the option of the subscribers to Party funds. It is clearly absurd to include these sums in the cost of a Referendum. The cost of a Referendum is what it would cost the Government to set up the voting machinery—nothing more. If people

are determined to spend money on meetings and political literature, they cannot of course be stopped; but it is doubtful, if the element of personal competition were withdrawn, whether the present foolish expenditure on posters and unnecessary meetings and circulars and literature—one hesitates to use the word in such a context—would go on.

I am confident that the more the question of the Poll of the People is studied, the more clearly will it be seen how weak are the objections to it, and how strong the arguments for it. That it deals no blow at the best part of the representative system I am certain. What it does do is to provide a corrective to some serious evils of that system. Representative government, like many other political institutions, is showing a tendency to destroy itself by means of its own waste products, waste products immensely increased by the fierceness of the Party fever. By placing the veto in the hands of the people themselves by means of a popular reference, we are able to get rid of the poisonous effects of these waste products.

### III. OTHER ARGUMENTS AGAINST THE REFERENDUM.

Before I close this chapter I should like to deal with some of the other objections raised by Liberal

and Labour publicists. Whether the *British Weekly* is still against the Referendum I do not know, but some ten years ago, in its capacity of an advanced Liberal organ, it took up a very strong line against the Poll of the People. Its arguments were set forth with its usual force and ability, and also with extraordinary candour, first in leading articles and then in a pamphlet which was widely circulated, and which, as it was never condemned by any official Liberal writer, may, I think, be presumed to have been the views of the Liberal leaders.

In speaking of the Referendum in America the writer in the *British Weekly* said :

“Members of the Legislatures, they [the advocates of the Referendum] say, may be ‘lobbied, wheedled or bull-dozed,’ but the citizens are too numerous to be threatened or befooled. In the words of Mr. Goldwin Smith, a staunch supporter of the Referendum, the people ‘is not in fear of its re-election if it throws out something supported by the Irish, the Prohibitionists, the Catholic, or the Methodist vote.’ In America this partial or local Referendum has worked as a distinctly conservative force. It has been, as Mr. Bryce points out, rather a bit and a bridle than a spur for the Legislature. Here is a fact which English Liberals should ponder. *In America, as in Switzerland, the Referendum retards progress.* Of America, as of

Switzerland, Mr. Lecky's words are true. 'The tendencies which it [the popular vote] most strongly shows are a dislike to large expenditure, a dislike to centralization, a dislike to violent innovation.'

I believe Lecky's view to be absolutely true, and yet even in a time when we are all saying that we are ready to do anything to check large expenditure it is, I have to confess, almost impossible to get people even to consider the Poll of the People!

After being assured that the French will have nothing to do with the Referendum, the *British Weekly* pamphlet from which I am quoting has a section headed: "Should Liberals support the Referendum?" Here we are told that "the Referendum is an appeal from knowledge to ignorance." Then comes a section entitled "The Real Objections." The first of these is contained in the statement: "*The Referendum would work steadily to the disadvantage of the Liberal Party.*" The writer is apparently convinced that the mass of the country hates reform, and can only be cajoled into accepting it by a system of log-rolling. Here are some of his statements:

"Now it must surely be obvious that there would never be a sufficient number of voters enthusiastic enough about any one reform to carry it in the teeth of the formidable opposition that



would make itself felt through the Referendum. When the people vote at an election, they vote for a number of reforms, both social and political; the man who cares for one may be quite indifferent to another. . . .

“It is universally agreed that the Referendum has worked in Switzerland as a check on the forces of progress. Conservative minds in all countries love the idea of a Referendum, because they see how it damps and chills reforming ardour. At the Referendum polls the people tighten the purse-strings, repent of generous enthusiasms, yield to the petty caprices and whims of democratic government. The second thoughts of voters are apt to be purely selfish thoughts. Advocates of the Referendum see in it a drag upon the wheels of social legislation. . . .

“Are Liberals going to put another weapon in the hands of their deadliest enemies? Every reformer mourns over the slow and lingering processes of Parliamentary legislation. It is hard, indeed, to carry the very smallest Radical measure in the teeth of the vested interests. By adopting the Referendum we should enormously strengthen all the forces of reaction.”

But if the electors of this country do not want reforms of the kind that are wanted by the Liberal Party, we surely have a right to demand, in the name of democratic principles, that they should be allowed to refuse their consent to such legislation.

If anyone should be inclined to think that the

attitude adopted by the *British Weekly* must not be regarded as representative of modern Liberals, I will refer them to an article published in the *Westminster Gazette* also some ten years ago. The article is from the Berlin Correspondent of that paper, and summarizes the views of Professor Hans Delbrück on the Referendum in his book on *Government and Popular Will*. Professor Hans Delbrück, as a German Conservative, does not mind expressing an argument against the Referendum which Party Liberals and Radicals do not dare to use openly here. The argument is that the people are foolish, and do not know what is good for them. "If we had the Referendum in Germany," says Dr. Delbrück, "there is no doubt whatever that this Referendum would have rejected those laws which have meant the greatest progress for our existence." In other words, the wise and enlightened and patriotic legislators are justified in designing laws for the benefit of the people and imposing them upon the people in defiance of the people's will. That is no doubt good, sound Tory doctrine, but one hardly expected to find it in the *Westminster Gazette*.

Dr. Delbrück, we are further told, takes, as an illustration of this inability of the people to understand what is their own interest, the action of the Swiss in connection with the Sickness and

Accident Insurance Bill, a Bill which was modelled on German legislation. When the Bill was first introduced into the Swiss Legislature it passed through both Houses by an almost unanimous vote. Yet at a Referendum it was rejected by a very large majority. Ten or twelve years later a measure aiming at the same objects, but drafted on different lines, passed through the Legislature, was again submitted to a Referendum, and on this occasion was accepted.

By what strange process of reasoning this episode can be construed into a condemnation of the Referendum it is not easy to understand. A better illustration of the value of this addition to the constitution could hardly be given. The original Bill was a measure which the Swiss people did not like because it interfered with their voluntarily organized Friendly Societies. They preferred to go without a Bill at all rather than to have a Bill to which they objected. They waited ten years, and then obtained a Bill which suited them.

## CHAPTER III

### THE BILL OF 1911

LORD BALFOUR OF BURLEIGH introduced his Reference to the People Bill in the House of Lords on March 2, 1911, when it was read a first time after debate. Lord Selborne, as the outcome of his South African experience, strongly supported the Bill, and Lord Crewe and Lord Loreburn, for the Liberal Government then in office, as strongly denounced it, partly as a constitutional innovation, partly on the ground of expense. The Bill was debated at length on the second reading stage on March 28 and 29, 1911, and the debate was then adjourned indefinitely. Lord Morley of Blackburn opposed the Bill with peculiar vehemence, saying incidentally that "to set up as the great cardinal and organic standard of Parliamentary life the standard of always consulting and being guided by and thinking of nothing else but what the people desire is to my mind a thoroughly wrong standard." Lord Lansdowne, while unable to vote for the Bill, reiterated his belief in the Referendum "as a quite exceptional measure for the purpose of putting an

end to a persistent difference of opinion between the two Houses, and a persistent difference of opinion with regard to important subjects." Lord Beauchamp opposed the Bill, on the ground that the Referendum had not worked well in Australia, that it would cost £200,000 each time, and that it was inconsistent with representative government. Lord Cromer, on the other hand, chaffed the authors of the Parliament Bill on their alleged fear of the Referendum as revolutionary; he warmly supported the Bill and was careful to distinguish the Referendum from the Initiative. Lord Northcote, as a former Australian Governor, pronounced for the Bill, and Lord Weardale, on behalf of "a growing section of advanced Liberal opinion," rebuked his leaders for their hostility to what he regarded as a democratic measure. Lord Sheffield, Lord Newton, and Lord Ancaster all spoke strongly against the Bill, Lord Ancaster being specially alarmed at the proposal that 200 members of the House of Commons should have the right to insist on the reference of a Bill to the people. The debate was then adjourned *sine die*, and no more was heard of the Bill in the highly exciting session of 1911.

It may be added that this Bill was originally drafted on Mr. Strachey's instructions by Mr. Pember, now Warden of All Souls' College, Oxford.

It was finally settled by Mr. Pember and Mr. Strachey in consultation with Lord Balfour of Burleigh, who introduced it in the House of Lords. The full text follows.

[1 GEO. V., 1911.]

### A BILL INTITULED

AN ACT TO PROVIDE FOR THE TAKING OF A POLL OF THE PARLIAMENTARY ELECTORS OF THE UNITED KINGDOM WITH RESPECT TO CERTAIN BILLS IN PARLIAMENT; AND FOR OTHER PURPOSES CONNECTED THEREWITH.

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

#### *Reference to People of Bills Rejected by House of Lords.*

1. When any Bill for a public general Act of Parliament (in this Act referred to as a "rejected Bill") is passed by the House of Commons and is sent up to the House of Lords before the first day of July in the session in which it is so passed, but the House of Lords rejects such Bill or fails to pass such Bill within forty days after it is so sent up to that House, or passes such Bill with any amendment to which the House of Commons will not agree, such Bill shall be, on the demand of either House of Parliament, submitted to a poll of the

parliamentary electors of the United Kingdom (hereinafter referred to as "a poll of the parliamentary electors") in manner provided in this Act, and in the form in which such Bill was passed by the House of Commons.

*Reference to People of Certain Bills Passed by both Houses of Parliament.*

2. When any Bill for a public general Act of Parliament (hereinafter referred to as a "carried Bill") is passed by both Houses of Parliament, and a petition signed by not less than two hundred members of the House of Commons praying that such Bill may be submitted to a poll of the parliamentary electors in manner provided in this Act is presented to the Crown, such Bill shall be submitted to a poll of the parliamentary electors in manner provided in this Act and in the form in which such Bill was passed by both Houses of Parliament.

3. A carried Bill to which the provisions of this Act relating to a carried Bill apply shall not be presented to His Majesty for assent until it shall have been submitted to the poll of the parliamentary electors in manner provided in this Act, and the result of such poll shall have been declared in manner provided in this Act.

*Petition for Reference to People to be Communicated to both Houses.*

4. In the event of the presentation to the Crown of such a petition as aforesaid with respect to a carried Bill, the Secretary of State for the Home

Department shall forthwith certify to the Lord Chancellor and to the Speaker of the House of Commons that such petition has been presented to the Crown, and thereupon the Lord Chancellor and the Speaker of the House of Commons shall respectively communicate or cause to be communicated to the said Houses respectively at their next sitting the receipt and contents of such certificate.

*Writs for Polls under this Act to Issue upon Royal Proclamation and Order in Council.*

5. Upon His Majesty in Council being pleased to issue his Royal Proclamation for the taking of a poll of the parliamentary electors with respect to any rejected Bill or to any carried Bill to which the provisions of this Act relating to a carried Bill apply and to order that the Lord Chancellor, the Lord Keeper or Lords Commissioners of the Great Seal for the time being and the Lord Chancellor of Ireland respectively shall cause writs to be issued for the taking of a poll of the parliamentary electors with respect to such Bill, the Lord Chancellor, Lord Keeper, or Lords Commissioners of the Great Seal for the time being and the Lord Chancellor of Ireland respectively shall forthwith issue out writs for the taking of the poll of the parliamentary electors, and one and the same day shall be named in every one of the said writs for the taking of such poll, and such day shall not be less than seven days and not more than fourteen days after the day of issue of the writs.



*Forms in Schedule to be Used.*

6. The forms contained in the Schedule to this Act, or forms as nearly resembling the same as circumstances will admit, shall be used in all cases to which they refer and are applicable, and when so used shall be sufficient in law.

*Provisions of Law Relating to Parliamentary Elections to Apply to Poll under this Act.*

7. Subject to the provisions of this Act, the provisions of the law relating to parliamentary elections with respect to writs for counties or boroughs or other constituencies at a parliamentary election, the delivery of the same to the returning officer, the endorsing upon the same by such officer of the day on which he shall receive the same, the taking of a poll at a parliamentary election, the notice of such poll, and any other provisions of the law relating to parliamentary elections with respect to writs or a poll at a parliamentary election shall, so far as applicable, apply to a writ for a poll of the parliamentary electors and to such poll in like manner in all respects as if they were herein re-enacted, and in terms made applicable to such writ and poll respectively.

*Returning Officers to Certify Result of Polls under this Act.*

8. As soon as the returning officer shall have ascertained the result of the poll of the parliamentary electors in any county or division of a

county or borough or division of a borough or other parliamentary constituency by counting the votes given at such poll, he may declare the result of such poll at the place where such votes are counted, and shall forthwith return the result of the poll to the Clerk of the Crown in Chancery, and shall, for that purpose, endorse on the writ and sign a certificate of such result in the form contained in the Schedule hereto.

*Clerk of Crown in Chancery to Count Total Votes  
and Certify same to the Speaker and Chairman  
of Committees in House of Lords.*

9. Before the expiration of seven days after the day named in the writs for the taking of the poll of the parliamentary electors, the Clerk of the Crown in Chancery shall, in accordance with regulations to be made for that purpose by the Lord Chancellor and the Speaker of the House of Commons, cause to be counted the total votes given at such poll in every parliamentary constituency as appearing in the certificates of the results of such poll in each constituency endorsed upon the several writs, and shall certify under his hand and seal to the Lord Chancellor and to the Speaker of the House of Commons, and to the Clerk to the Privy Council, the total number of such votes given in favour of the Bill, to which such poll related, becoming law (hereinafter referred to as "the total affirmative vote") in the United Kingdom, and the total number of such votes given against such Bill becoming law (hereinafter referred to as "the total

negative vote ") in the United Kingdom, and shall also cause such certificate to be published in the London, Edinburgh, and Dublin Gazettes.

(1) The certificate of the Clerk of the Crown in Chancery shall be conclusive evidence for all purposes as to the total affirmative vote and the total negative vote in the United Kingdom and also in England and Wales, Scotland, and Ireland respectively, and shall not be questioned in any court of law or otherwise.

(2) Any regulations made pursuant to this section shall be laid before both Houses of Parliament, and shall be published in the London, Edinburgh, and Dublin Gazettes.

*Bills Referred to People when to be Presented for Royal Assent and to become Law.*

10.—(1) If the total affirmative vote in the United Kingdom shall exceed the total negative vote therein by not less than two votes per centum of the total negative vote, the Bill to which the poll of the parliamentary electors related shall forthwith be presented to His Majesty for assent in the form in which it was submitted to the poll of the parliamentary electors and a rejected Bill shall, upon the Royal Assent being signified thereto, become an Act of Parliament in like manner as if it had been passed by both Houses of Parliament, notwithstanding that the House of Lords have not consented to such Bill.

(2) If the total affirmative vote in the United Kingdom shall not exceed the total negative vote

by more than two per centum of the total negative vote, the Bill to which the poll of the parliamentary electors related shall not be presented to His Majesty for assent.

*Who may Vote at Poll under this Act.*

11. Subject to the provisions of this Act, any person whose name is for the time being on the parliamentary register of electors for any constituency shall be entitled to vote in that constituency at a poll of the parliamentary electors.

*For Prevention of Plural Voting.*

12. No person shall vote in more than one constituency at one and the same poll of the parliamentary electors and the poll of the parliamentary electors of the United Kingdom in all the constituencies in the United Kingdom shall be deemed to be the same election within the meaning of the enactments relating to personation and to voting, and the question which may be asked of voters at the poll shall be: "Have you already voted here or elsewhere at this poll of the parliamentary electors of the United Kingdom?"

*Appointment of Persons to attend Counting of Votes and Taking of Polls.*

13.—(1) The returning officer in each constituency shall appoint two persons to attend at the counting of the votes. One of such persons shall, previously to being so appointed, have made a

declaration in accordance with the Statutory Declarations Act, 1835, that he is in favour of the Bill in respect to which the poll of the parliamentary electors is to be taken being presented to His Majesty for assent, and the other of such persons shall previously to being so appointed have made a like declaration that he is against the Bill being so presented. All the provisions of the law relating to parliamentary elections which relate to the agents appointed by candidates at a parliamentary election to attend the counting of the votes shall, as far as applicable, apply to such persons in like manner as if they were such agents.

(2) Each of such persons shall appoint one person to attend in each polling station in the constituency during the taking of the poll. All the provisions of the law relating to parliamentary elections which relate to the agents of a candidate at a parliamentary election when present at the taking of a poll at such election shall, so far as applicable, apply to such person when attending in a polling station during the taking of a poll of the parliamentary electors pursuant to this section in like manner as if they were such agents.

### *University Elections.*

14. Subject to the provisions of this Act and of any order or regulation made thereunder, a poll of the parliamentary electors for a university or combination of universities shall be taken in like manner as a poll at a parliamentary election for such university or combination of universities would

have been taken if this Act had not been passed: Provided that notwithstanding anything in any other Act of Parliament contained such poll shall not continue for more than one day, and no person shall vote thereat unless he attends to vote in person.

*Copies of Bill to be on View in Constituencies.*

15. The returning officer shall cause a copy of the Bill printed by the King's Printers in the form in which the same will be submitted to the poll of the parliamentary electors to be deposited for public inspection at the office of—

- (a) The clerk of the peace for any county, riding, or division of a county in England, Wales, or Ireland, comprising any constituency or part of any constituency for which he is the returning officer ;
- (b) The principal sheriff clerk in any county or district or division of a county in Scotland comprising any constituency or part of any constituency for which he is the returning officer ;

not less than seven days before the day appointed for the taking of the poll of the parliamentary electors, and such copy shall be kept in the office in which it is so deposited until the poll has been taken, and shall be open to public inspection at all reasonable hours. The principal officer of the Public Bill Office of the House of Commons shall,

on the request in writing of the returning officer, supply him free of charge with such number of copies of the Bill as he may require for the purpose of this section.

*Powers to make Orders and Regulations.*

16.—(1) The Lord Chancellor and the Speaker of the House of Commons shall make such orders or regulations as may appear to them to be necessary for the proper taking of the poll of the parliamentary electors or for otherwise bringing this Act into operation, and such orders or regulations may modify the provisions of this Act and the law relating to parliamentary elections, including any enactments forming part of such law, so far as may appear to them to be necessary for such purposes.

(2) Any such order or regulation as aforesaid shall be laid before both Houses of Parliament and shall be published in the London, Edinburgh, and Dublin Gazettes.

*Definitions.*

17. In this Act, unless the context otherwise requires, the expression “law relating to parliamentary elections” includes all laws, customs, and enactments relating to parliamentary elections, inclusive of the law respecting the qualification and registration of voters.

*Short Title.*

18. This Act may be cited as the “Reference to the People Act, 1911.”

*Commencement of Act.*

19. This Act shall come into operation on the first day of January one thousand nine hundred and twelve.

## SCHEDULE.

WRIT FOR A COUNTY OR BOROUGH AT A POLL  
OF THE PARLIAMENTARY ELECTORS OF THE  
UNITED KINGDOM.

<sup>1</sup>GEORGE, by the grace of God of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, to the<sup>2</sup> of the county [*or borough, or as the case may be*] of  
GREETING :

WHEREAS it is fitting that a Bill in Parliament intituled<sup>3</sup> the short title whereof is<sup>4</sup> should be submitted to a poll of the parliamentary electors of the United Kingdom pursuant to the Reference to the People Act, 1911, WE command you that, notice of the time and place of taking the said poll being first duly given, you do cause such poll of the parliamentary electors of the said county [*or the* division of the said county, *or the borough or division of a borough, or as the case may be*] of to be taken

<sup>1</sup> The name of the Sovereign may be altered when necessary.

<sup>2</sup> Insert "sheriff" or other returning officer.

<sup>3</sup> Insert title of Bill.

<sup>4</sup> Insert short title of Bill.



according to law on the                      day of  
 one thousand nine hundred and                      , and that  
 you do cause the result of such poll when so taken  
 to be certified to Us in our Chancery without delay.

Witness Ourselves at Westminster, the  
                     day of                      , in the                      year of  
                     Our reign, and in the year of our Lord 19

#### LABEL OR DIRECTION OF WRIT.

To the<sup>1</sup>                      of

A writ of a poll of the parliamentary electors of  
 the said county [*or division of a county or borough,*  
*or division of a borough, or as the case may be*] pur-  
 suant to the Reference to the People Act, 1911.

<sup>1</sup> Insert "sheriff" or other returning officer.

#### *Endorsement.*

Received the within writ on the                      day of  
                     19                      .

(Signed) *A. B.*,  
                     High Sheriff  
                     [*or Sheriff, or Mayor, or as*  
                     *the case may be*].

#### CERTIFICATE ENDORSED ON WRIT.

I hereby certify that at the poll of the parlia-  
 mentary electors of                      taken in pursuance  
 of the within writ                      of the said electors  
 voted in favour of the within-mentioned Bill in

Parliament becoming law, and of the said electors voted against the same becoming law.

(Signed) *A. B.*,

High Sheriff

[*or Sheriff, or Mayor, or as  
the case may be*].

NOTE.—A separate writ will be issued for each county as defined for the purposes of a parliamentary election.

---

#### FORM OF NOTICE OF POLL OF THE PARLIAMENTARY ELECTORS.

The returning officer of the of  
will on the day of now next  
ensuing between the hours of and  
proceed to the taking of a poll of the parliamentary  
electors of the said county [*or division of a county  
or borough, or division of a borough, or as the case  
may be*] pursuant to the Reference to the People  
Act, 1911, with respect to Bill the short title  
whereof is

(Signed) *A. B.*,

Sheriff

[*or Mayor, or as the case may be*],  
day of 19 .

Take notice that all persons who are guilty of bribery, treating, undue influence, personation or other corrupt practices or any illegal practices at the said poll, will, on conviction of such offence, be liable to the penalties mentioned in that behalf in the Corrupt Practices Prevention Act, 1884, the

Corrupt and Illegal Practices Act, 1883, and the Ballot Act, 1872, and the Acts amending the said Acts.

Take notice that by the Parliamentary Elections (Returning Officers) Act, 1875, as applied by the Reference to the People Act, 1911, to a poll of the parliamentary electors under that Act, it is provided that any person having any claim against a returning officer for work, labour, materials, services, or expenses in respect of any contract made with him, by or on behalf of the returning officer for the purposes of a poll of the parliamentary electors of the United Kingdom, shall, within fourteen days after the day on which the return is made of the result of such poll, transmit to the returning officer the detailed particulars of such claims in writing, and the returning officer shall not be liable in respect of anything which is not duly stated in such particulars.

### FORM OF BALLOT PAPER.

#### FORM OF FRONT OF BALLOT PAPER.

Poll of the Parliamentary Electors of the United Kingdom, 19 .			
BALLOT PAPER.			
<sup>1</sup> Counterfoil No.	If you wish the Bill the short title of which is " to become law, place a cross under the word "Yes." If not, place a cross under the word "No."	YES.	NO.

<sup>1</sup> Note.—The counterfoil is to have a number to correspond with that on the back of the ballot paper.

## FORM OF BACK OF BALLOT PAPER.

<sup>2</sup>No.

Poll of the parliamentary electors of county [*or borough or division of county or borough, or as the case may be*], 19 , with respect to the<sup>3</sup>

<sup>2</sup> The number on the ballot papers is to correspond with that in the counterfoil.

<sup>3</sup> Insert short title of Bill.

## DIRECTIONS AS TO PRINTING BALLOT PAPER.

Nothing is to be printed on the ballot paper except in accordance with this Schedule.

The number on the back of the paper shall be printed in small characters.

---

FORM OF DIRECTIONS FOR THE GUIDANCE OF THE  
VOTER IN VOTING, WHICH SHALL BE PRINTED  
IN CONSPICUOUS CHARACTERS AND PLACARDED  
OUTSIDE EVERY POLLING STATION AND IN  
EVERY COMPARTMENT OF ANY POLLING  
STATION.

The voter will go into one of the compartments and, with the pencil provided in the compartment, place a cross on the right-hand side, under the word "Yes" or "No," according as he desires to vote, thus X.

The voter will then fold up the paper so as to show the official mark on the back, and leaving the compartment will, without showing the front of the paper to any person, show the official mark on the

back to the presiding officer, and then, in the presence of the presiding officer, put the paper into the ballot box and forthwith quit the polling station.

If the voter inadvertently spoils a ballot paper he can return it to the officer, who will, if satisfied of such inadvertence, give him another paper.

If the voter votes both "Yes" and "No," or places any mark on the paper by which he may afterwards be identified, his ballot paper will be void and will not be counted.

If a voter takes a ballot paper out of the polling station or deposits in the ballot box any other paper than the one given him by the officer, he will be guilty of a misdemeanour, and be subject to imprisonment for any time not exceeding six months with or without hard labour.

NOTE.—These directions shall be illustrated by examples of the ballot paper.

The Bill was endorsed as follows :

## Reference to the People.

[ H.L. ]

---

### A B I L L

#### INTITULED

An Act to provide for the taking of a Poll of the  
Parliamentary Electors of the United Kingdom  
with respect to certain Bills in Parliament ; and  
for other purposes connected therewith.

*The Lord Balfour.*

---

Ordered to be printed 2nd March 1911.

---

LONDON :  
PUBLISHED BY HIS MAJESTY'S STATIONERY OFFICE.

To be purchased, either directly or through any Bookseller, from  
WYMAN and SONS, LTD., Fetter Lane, E.C., and  
32, Abingdon Street, S.W. ; or  
OLIVER and BOYD, Tweeddale Court, Edinburgh ; or  
E. PONSONBY, LTD., 116, Grafton Street, Dublin.

---

PRINTED BY EYRE AND SPOTTISWOODE, LTD.,  
EAST HARDING STREET, E.C.,  
PRINTERS TO THE KING'S MOST EXCELLENT MAJESTY.

[Price 1½d.]

## CHAPTER IV

### THE POLL OF THE PEOPLE IN SWITZERLAND

#### I

SWITZERLAND did not invent the Referendum or Poll of the People. The first clear example of a law being referred to the people is the vote taken in Massachusetts, in the year 1778, on the proposed Constitution for the State Commonwealth. Yet Switzerland has used the Referendum more conspicuously and also more efficiently than any other nation. We are, of course, aware that all the State Constitutions in America except one contain provision for taking a Poll of the People. In cases of constitutional change the Poll is always made obligatory. Nevertheless, the public in general, or at any rate the British public, will never pay much attention to State or Cantonal action or, as they confusedly call it, local government. Not till the Federal Government, as it some day will, adopts the Referendum for all great changes will the ordinary English politicians realize how great a part the Referendum plays in American political life.

Be this as it may, the Swiss stage is a very good one on which to watch the working of the Referendum. The popular veto over Federal legislation is of three kinds. First, there is the obligatory Referendum under which all alterations in the constitution of the Swiss Federal Republic must be sent for the affirmation or the veto, the "Yes" or the "No," of all the citizens. Next there comes the optional or facultative Referendum, under which 30,000 voters, or eight Cantons through their representatives, may apply to the Government to have any law passed by the national Legislature submitted to the vote of the electors before it comes into operation. In addition there is something which in appearance partakes of the nature of the Referendum or Poll of the People, but which is in essence different. That is the Initiative. Under the Initiative 50,000 voters can petition that a certain Bill set forth either by them or by the Federal Parliament should become part of the constitution. When such a petition takes place, the Bill is submitted straight to the vote of the people without undergoing debate or criticism in the Federal Parliament. We may add that this system, with a slight variation, is to be found in the constitutions of almost all the Cantons as well as in the Federal system. We do not, however, propose to deal



in detail on the present occasion with anything except the Federal and National Poll of the People.

Many are the prejudices, misunderstandings, and complete delusions that are entertained in regard to the working of the Veto of the People. An excellent way of clearing them away is to be found in the chapter on the Referendum and the Initiative given by Mr. Robert C. Brooks in his *Government and Politics of Switzerland* (Harrap: 1910). Mr. Brooks begins by noting that the Referendum in Switzerland does not prevent reform when reform is needed and also desired by the people. During a period of forty years in Switzerland there were twenty-one amendments passed by the Swiss Federal Legislature, and all but five were accepted; that is, sixteen were passed. During the same time only two amendments were added to the constitution of the United States. There will, of course, be a conflict of view as to whether the Veto of the People as a whole was wisely or unwisely exercised; but it may be said with certainty that the tendency of the Vote of the People was not anarchical, or wild, or Socialistic. On the contrary, it was, we hold, inspired by a wise and yet not obstinate conservatism.

What one may call necessary legislation was never vetoed. When economic and financial

subjects were referred to the people they were dealt with with great reason and moderation. The people as a whole showed no tendency to be attracted by unsound finance. But this is not all. A French-Swiss jurist has pointed out that the benefits of the Referendum are to be seen not so much in the Bills actually vetoed as in the phantom pile of Bills which were never even introduced into the Legislative Assembly because it was quite clearly perceived that they would be referred to the people, and that on Referendum they would be promptly rejected. Log-rolling is a poor business at Berne, because the nicest arrangements of "Scratch my back and I'll scratch yours" are especially liable to dreadful exposure at the Poll of the People.

I have pointed out elsewhere the very remarkable fact that at a Poll of the People the proposed institution of "*le droit de travail*" was knocked on the head by an immense majority of the electors. Here was a signal proof that the danger of Socialistic legislation is much less in a constitution fitted with the popular veto than in one which does not possess it. Another very remarkable proof of the value of the Referendum is to be found in the voting on the amendment of the constitution for increasing the military obligations of the Swiss people—the scheme submitted to the

people in 1907. Under the Bill submitted the burden and obligation placed on the Swiss peasant both as regards recruit training and annual training were very nearly doubled. The electors had in effect put before them the question: "Do you want your sons to be taken away from the farm or the workshop for twice the time they are now taken away, which is already inconvenient enough; and do you yourself want in future to be taken away from your business for double the time, although you already find it very inconvenient to put in your annual field exercises? On top of all this, do you want to pay more taxes for an increased *Corvée*?"

Very naturally, the Socialists, who were bitterly opposed to the Bill, thought themselves certain of victory when they demanded that the Bill should go to Referendum. The Swiss people, they argued, were not likely to put their necks into such a noose as that and at the same time increase the power of the oligarchy, and all for nothing. Yet when the Bill went to the poll, the Swiss democracy, to its eternal honour, passed it by a handsome majority. Democracy is neither base nor foolish, whatever the Lenins on the one hand or the Reactionaries on the other may tell us.

Dealing with the general results of the Referendum since its formal introduction in 1874, Mr.

Brooks gives the following clear and precise summary :

“ Between 1874 and the end of 1908, 261 laws and resolutions subject to Referendum were passed by the Swiss Federal Legislature. Of these, thirty were brought to a popular vote, and nineteen were rejected. Stated in bare statistical form, therefore, the net effect of the Referendum was to invalidate slightly more than 7 per cent. of that part of the legislative output to which it applied. During this period a number of weighty measures were passed against which petitions were not even circulated.”

That is surely a very striking argument against the suggestion that the Referendum destroys the sense of parliamentary responsibility and side-tracks the representatives of the people. On the suggestion that the Referendum is dangerous because people wouldn't go to the poll, the facts and figures given by Mr. Brooks are very striking. When the passage of a measure is considered a dead certainty, the voters no doubt do not take the trouble to vote ; but when there is anything important to be decided the voting very often exceeds 70 per cent. of the electorate—a most notable fact. For example, in the case of nationalization of the railways, 76·6 per cent. of the people voted. Remember, in this context, that at ordinary elections in Switzerland, that is, elections to choose repre-

sentatives or candidates for office, as a rule only 66·3 per cent. of the qualified voters go to the poll. After noting that according to American ideas the cost of the Swiss Referendum is incredibly low (something between 6 and 13 centimes per voter), Mr. Brooks deals most ably with the most important of the stock arguments against the Poll of the People :

“ A stock argument against the Referendum is that it reduces the legislature’s sense of responsibility by placing final decision in the hands of the people. It is a peculiarly difficult argument to discuss, inasmuch as there is no opportunity to observe the conduct of the same legislature acting both with and without the Referendum. One of the greatest authorities on the subject, himself for more than twenty years a representative of the Swiss people, expresses the opinion that ‘ the Referendum prevented but little good that we wished to do, but simply by standing as a warning before us averted much evil. . . . In spite of possible backward movements, it did not condemn democracy to a halt, but has given steadiness to progress itself.’ Professor Rappard admits that there may have been some decline of political standards since the adoption of the Initiative and Referendum, but attributes it to other causes, chiefly the anonymous impersonal committee form of procedure which prevails in all Swiss legislatures. Fear of the popular veto should tend to make legislators timid

rather than reckless. If so, the Initiative may be used to galvanize them into activity. In any event an otherwise popular legislator's support of measures which fall under the ban of the referendum is not likely to cause his defeat at the ensuing election. According to a humorist quoted by Professor Borgeaud, 'the Swiss are a singular people; they disown their representatives, and then they re-elect them.' Another argument against direct legislation was that it would make Party government impossible. The political atom would supersede the organization; purely mechanical combinations changing with each issue would dominate the political stage. Without stopping here to discuss the beneficence or maleficence of Party government, it is certain that in Switzerland the Initiative and Referendum have not caused the break-up of political organizations. On the other hand, they have increased somewhat the influence of minority parties. A great many authorities on direct legislation urge its high value as a means of political education. In campaigns for the choice of officials personalities necessarily play some part, but in Initiative and Referendum campaigns there is a maximum opportunity to hear and decide solely on the basis of the facts and principles involved. The Swiss people have repeatedly shown the ability to learn and to change their opinion upon questions submitted to them. Thus, while the proposals were not identical in the two cases, there was a distinct reversal of popular attitude on the Railroad Bills of 1891 and 1898, on the uniform industrial

legislation amendments of 1894 and 1908, and on the Army Amendment and Army Bill of 1895 and 1907 respectively. Admitting the difficulty of deducing general tendencies from so extensive a field of legislation, it seems to be generally agreed that the Swiss people are inclined to react strongly against Initiative and Referendum measures that savour of extravagance or bureaucracy. Professor Rappard also points out their hostility to 'ideological legislation'—that is, to legislation 'grounded solely or mainly on abstract conceptions of justice,' as for example, the 'right to work' initiative. Certainly the Referendum has at times betrayed a conservative tendency which dismayed its friends. Thirty years ago Sir Henry Maine indulged in an explanation of this tendency, particularly as shown in connection with labour legislation. In the light of Switzerland's subsequent progress toward social legislation and industrial democracy, his theory appears more ingenious than convincing. Direct legislation in Switzerland has not realized all the extravagant anticipations of its friends. But on the other hand it has completely falsified the dismal prophecies of chaos and revolution uttered by the Conservatives of an earlier period. It has become a vital and freely functioning part of the Swiss political organism. Although changes are sometimes suggested in the form and application of the Initiative and Referendum, there has long since ceased to be any fundamental opposition to them in Switzerland."

No words of mine are needed to support this admirable plea for the Referendum. I will only add that, taken as a whole, the experience of the United States is entirely consistent with Mr. Brooks's account of the working of the Referendum in Switzerland. The only difference is that in America the Poll of the People works under an *alias*, or rather under several *aliases*, while in Switzerland it operates in its own name.

## II. THE POLL OF THE PEOPLE AND A CAPITAL LEVY: THE SWISS EXAMPLE.

The results of the Poll of the Swiss People on the Bill, or legal project, to be more exact, for imposing a Capital Levy throughout the Republic, must be shortly recorded. The voters—Switzerland, remember, had universal suffrage—on the most democratic basis—voted on Sunday, November 3, 1922, and, by a majority of seven to one, threw out the scheme. The voters against the Capital Levy numbered 735,894, and only 109,686 voted for it. In every Canton there was a majority against the proposal, and in every town—that is, in every place where the Socialists expected victory—there was a crushing majority.

What makes these facts the more remarkable is that—(1) Switzerland is going through a period of depression; (2) the Socialist Party is very strong



in Switzerland, and especially in the populous canton of Zurich, into which many German Socialists emigrated before the War; (3) the project before the electors was very carefully drawn up and was, in appearance, distinctly moderate—much more moderate than the Capital Levy scheme which is part of our Labour Party's policy. The Swiss plan aimed at raising only £50,000,000, while that of the British Labour Party aims at some £3,000,000,000. Again, the Swiss project, although the grading was steep, was most carefully designed to be "once and for all"; (4) the Swiss scheme was not accompanied, like that of the Labour Party here, by a proposed increase of Income-tax and Super-tax. Both taxes in Great Britain will, if Labour has its way, be much more steeply graded than now, in addition to the Levy.

In fine, the Swiss Levy was much more like that which has been proposed here by moderate, though as we think mistaken, economists than that which Mr. Ramsay MacDonald, Mr. Clynes, and their colleagues so wholeheartedly adopted. The panic caused by the proposals of the Socialists—not an organized scare engineered by the capitalists, but a genuine and spontaneous commercial panic—was seen in the voting. The shadow of the Levy sent down Swiss securities to a point that represented a loss of fifty millions sterling,

and what was much worse from the point of view of Switzerland (for falls in stocks, if quickly followed by a rise, are merely paper transactions) was the withdrawal of very large sums of money from the banks, where they had been placed on deposit. This meant that Swiss financial business was suddenly and dangerously restricted. The banks, as they lost their deposits, lost also the power to give credits to peasants, manufacturers, and their other customers.

The Swiss people are most heartily to be congratulated on their good sense, their courage, and their determination not to be led by the Socialists into a fool's paradise. No one can possibly talk about the voters of the Swiss Confederation being browbeaten by their social superiors, or by the capitalists and the well-to-do, or by any other characters of Socialist or Communist fiction. The Swiss voter is, as he has always been, the most independent of men. He votes as he likes, and no one finds it easy to exercise influence over him. He is even very largely newspaper-proof and also orator-proof. At any rate, this is true of the peasant, who, in his mountain fastnesses, cannot be intimidated or inspired by the "herd instinct." This victory for common sense, which means the conservation of savings, and therefore also of foundations of industrial welfare, cannot but be a

special source of satisfaction to all friends of Switzerland. For a quarter of a century I have urged, almost week by week, that the Referendum, or Poll of the People in some form, is the essential corrective and antiseptic to the imperfections of representative institutions. Without it Democracy, which signifies majority rule, cannot function wholly and smoothly.

Unless there is the Referendum in the background as a veto, exercisable when necessary, on the vagaries of the nation's representatives, we not only may, but very likely shall, get minority legislation on questions of vital import to the nation.

My argument that to meet the dangers of a group system and of legislative log-rolling we ought to place the right of veto in the hands of the people themselves by means of the Referendum or Poll of the People has again and again been met with the specious argument that some day a measure which would utterly destroy capital—saved and stored wealth—would be placed before the country, and that the voters would be misled by a sudden rush of selfishness or sentiment. They would be induced to believe, it is argued, that they could thereby cure the maldistribution of the world's resources—a maldistribution which we deplore and detest, but for which we seek a true, not a quack remedy. The result, we were assured

*must be* a social revolution of the most terrible kind—one involving conditions as appalling as those that prevail in Russia to-day. When we refuse to be stampeded by these blood-curdling vaticinations we are called “Visionaries” and “Fanatics.” We are solemnly warned that if at a Poll of the People the voters were asked: “When Jones has so much money and you so little, why not do something to equalize conditions?” the people could not but plump for a division of the money. They could apparently be trusted to choose Members of Parliament, but must go wrong if they have to express their opinions of measures!

My answer is that the British people have sense enough not to cut their own throats. If they have not, you could not prevent them committing political and social suicide by a representative system.

In any case, the risks are much less than the risks of injury to the State involved in adopting dangerous laws through group log-rolling. Surely we shall not be thought to be going too far if we say that the Swiss result has not justified our opponents’ view. If the Swiss people at such a moment as this, and under such economic conditions as those prevailing, could vote as they did, we may feel certain that the British people would show no less good sense.

That the decision in Switzerland is unpleasant to the Labour Party cannot be doubted. It has not, however, been a surprise to them, for they have fully realized for many years that the Referendum, if introduced here, would take away their only chance of capturing the machine of government in order to carry out the demented financial policy which has been imposed on the organized Trade Unions—imposed by the influence of the Independent Labour Party, a minute body of fanatical, if well-meaning, theorists and pragmatists and paradoxical visionaries in economics. As proof of the Labour Party's dread of the Popular Veto—though we must except Mr. Clynes and one or two other of the leaders—we cannot do better than quote from Mr. Ramsay MacDonald's book *Socialism: Critical and Constructive*, published last year. He there made this somewhat sophistical pronouncement on the Referendum:

“Democracy can only work by representation. Either in the form of the mass meeting or of the Referendum and Initiative, modern democracy would come to a deadlock. It would be such a cumbersome mass that its movements would be too slow to secure internal peace. These direct forms of democracy cannot function in such a way as to impose upon the electors responsibility for their decisions.”

Mr. Ramsay MacDonald knows, of course, quite well the difference between the Referendum and the Initiative, though for convenience he assumes the garb of ignorance. The Initiative has never been asked for in this country. Even when you have the Initiative employed as it has been in Switzerland in the matter of the Capital Levy it produces no very terrible results. In any case Switzerland has not come to a deadlock in spite of the Referendum, the Initiative, and, strangely enough, also the mass meeting—a cumbrous term by which we suppose Mr. Ramsay MacDonald means the ancient meeting of the Gemeinde in the small cantons like Appenzell. It is there that the males of the canton assemble armed each with a sword and an umbrella!

Equally disingenuous is another objection raised by Mr. Ramsay MacDonald. Surely he must know that he is putting up a man of straw of his own invention when he says that modern problems require the examination of details by bodies which can act as committees, and that few proposals worth submitting to the popular vote can be settled offhand. Agreed. That is why we and other sane persons have always said that the Referendum should be employed as a supreme form of veto over log-rolling representative assemblies. The representatives must fashion, shape, and discuss; but when they have reduced their measure

to its final shape, the people, if the matter is one of moment, should be consulted. They must not, however, be asked: "Do you like this or that reform in the abstract?" To such a question the only answer which can be given by a reasonable man is: "That depends upon how you carry it out." The question submitted must be: "Do you consider that the definite provisions of the Bill now put before you should become law?"

That is what happens constantly in Switzerland. It happens, also, throughout all the States of America when State Constitutions are submitted, as they always are. The people vote upon them as Members of Parliament, who are often by no means more enlightened than their average constituents, vote at a third reading.

Mr. MacDonald must think of something better when searching for excuses to get rid of the terror of the Referendum — that instrument of true Democracy which haunts so painfully the dreams and thoughts of the Independent Labour Party. He and his colleagues know that, if once the Referendum were adopted, their Party would not have the faintest chance of passing the chief items in their programme.

Here I would ask the Majority of the new House of Commons to consider very seriously whether it

is not their duty as the guardians of our free Government to make the Poll of the People one of our permanent institutions. Curiously enough the moment is opportune. We have before us the very difficult problem of House of Lords Reform. I ask them with all sincerity to consider whether, instead of attempting to set up some new-fangled Second Chamber, it would not be much better to introduce the Poll of the People and make it applicable to all questions on which there is a doubt whether the representatives of the people in any particular legislative proposal have interpreted rightly the wishes of the country. To do this would involve no repeal or alteration of the Parliament Act. That Act would remain on the Statute Book in order to prevent the House of Lords from attempting to exercise any interference with legislation beyond detailed criticism and advice. Once more the Poll of the People would be an effective curb on log-rolling and minority rule.

If Lord Balfour of Burleigh's Bill were passed, the Government would in the case of any Bill thrown out by a majority of the House of Lords have two alternatives. They could either pass it over the heads of the Lords by the Parliament Act after nearly two years' delay for further



consultation, or else they could at once take a Poll of the People. In other words, the servants of Democracy would take their master's opinion as to who had correctly interpreted his orders. Their master's voice would decide.

Further, it may be remembered that the Bill prevents this plan working out unfairly towards the Liberals or the Labour Party. It has often been asserted that when the Unionists were in office they might pass legislation in collusion with the House of Lords and so prevent an appeal to the people. Under the *Spectator's* scheme—Lord Balfour's Bill was in reality its Bill—two hundred Members of Parliament could demand a Poll of the People before any Bill was submitted for the Royal Assent. The demand would be automatically conceded.

To give a concrete example, if in the future a Unionist majority were to pass a measure, dealing, say, with some Labour problem which the Labour Party and the Liberals greatly disliked but of which the House of Lords approved, two hundred Members could insist upon it being referred to the people with the simple question, "Is it your wish that this Act shall receive the Royal Assent? Those who wish the Act to come into operation should place a cross in the division headed 'Yes.' Those

of the contrary opinion should place a cross in that headed 'No.'”

The use of the Referendum as a power of veto is the simplest of political functions. It is much easier to vote on a complicated measure than on a complicated man.

## A SHORT BIBLIOGRAPHY OF THE REFERENDUM

### SWITZERLAND.

- ADAMS, Sir F. O. : "The Swiss Confederation." London : 1899.
- DEPLOIGE (translated by C. P. Trevelyan) : "The Referendum in Switzerland." London, 1898.
- SIGNOREL : "Le Referendum Législatif." Paris : Rousseau, 1896.
- LORAND, G. : "Le Referendum."
- STUESSI : "Referendum und Initiativ in den schweizerischen Kantonverfassungen." Zurich, 1893.
- CURTI : "Geschichte der schweizerischen Volksgerechtsgebung." Zurich, 1885.
- LOWELL, A. L. : "Governments and Parties in Continental Europe," vol. ii. London : Longmans, 1896 and 1904.
- LLOYD, H. D. : "A Sovereign People: A Study of Swiss Democracy," with Introduction by J. A. Hobson. New York : Doubleday and Page, 1907.
- "Real Democracy in Operation." By Selim Bonjour. London : George Allen and Unwin, 1920. 7s. 6d. net.
- Contemporary Review*, March, 1895. (Droz, N.)
- Revue des Deux Mondes*, August, 1891. (Waurin.)
- Arena*, April and May, 1905 : "Direct Legislation in Switzerland."
- Quarterly Review*, April, 1911. (Oechsli.)

### AMERICA.

- OBERHOLTZER, Dr. E. P. : "The Referendum in America." 1893.
- BRYCE, JAMES (afterwards Lord) : "The American Commonwealth." 1910.
- BEARD and SCHULTZ : "Documents on Initiative Referendum and Recall." London : Macmillan, 1912.

HONEY, S. R.: "The Referendum among the English," with Introduction by J. St. Loe Strachey. London: Macmillan, 1912.

LOWELL, A. L.: (*see above*).

PARLIAMENTARY PAPER, Cd. 5522: Reports on the Working of the Referendum in Various Countries. 1911.

*Arena*, September, 1907: "Practical Working in Switzerland and America."

*Contemporary Review*, January, 1911: "Referendum and Initiative in the U.S.A."

For the Referendum in various States *see Arena, passim*, 1905-08.

For municipal working, *see* National Conference on City Government, New York, 1906, and SIGNOREL as above.

#### BELGIUM.

ARNAUD: "La Révision Belge." 1893.

DEPLOIGE: In *Révue Générale*, December, 1891 (Brussels), on "Le Referendum Royal."

*See also* the works of SIGNOREL, DEPLOIGE, and WAURIN (under SWITZERLAND).

#### UNION OF SOUTH AFRICA.

KEITH: "Responsible Government in the Dominions" (p. 931). Oxford, 1912.

PARLIAMENTARY PAPER, Cd. 5099. (Natal.)

#### AUSTRALIA.

MOORE, Professor W. Harrison: "The Constitution of the Commonwealth of Australia." Melbourne, 1910.

DODD, W. F.: "Modern Constitutions" (pp. 31, 67). Chicago: University Press, 1909.

KEITH, A. B.: "Responsible Government in the Dominions" (pp. 865-874, 922-938). Oxford, 1912.

PARLIAMENTARY PAPERS, Cd. 5778, 5780.

*Quarterly Review*, April, 1911. (W. Harrison Moore.)

## GENERAL.

- BRYCE, JAMES: "The American Commonwealth." 1910.
- WEBB, SIDNEY and BEATRICE: "Industrial Democracy."
- COOLIDGE: In the *English Historical Review*, October, 1897, on "The Early History of the Referendum."
- The Direct Legislation Record*. Newark, New Jersey.
- LOWELL, A. L.: "The Referendum and Initiative" in the *International Journal of Ethics*, vol. vi., October, 1895.
- MAINE: "Popular Government" (p. 67). London, 1909.
- SIDGWICK, H.: "Elements of Politics" (p. 554).
- HOBSON, J. A.: "The Crisis of Liberalism" (pp. 69 ff.). London, 1909.
- McKECHNIE, W. S.: "The New Democracy and the Constitution" (pp. 12-15, 186-191). London: Murray, 1912.
- McKECHNIE, W. S.: "Reform of the House of Lords" (pp. 85-93). Glasgow, 1909.
- STODART, Miss J.: "Against the Referendum." London: Hodder and Stoughton, 1909.
- SHARP, CLIFFORD: "Against the Referendum": Fabian Tract, No. 155. 1911.
- Quarterly Review*, April, 1910: Professor A. V. Dicey on "The Referendum and its Critics."
- Oxford and Cambridge Review*, July, 1911: Lord Selborne.
- Edinburgh Review*, January, 1910, and October, 1913.
- Contemporary Review*, April, 1890, and April, 1895: Professor Dicey.
- National Review*, April, 1894: Professor Dicey, Lord Grey, Mr. Curzon, Mr. Strachey.
- LECKY, W. E. H.: "Democracy and Liberty," i. 293. London: Longmans, 1896.
- NAVILLE: "Apropos du Referendum" in "La Représentation proportionnelle." April, 1887.
- LLOYD, H. D.: (see above).
- HOBHOUSE, Professor L. T.: "Liberalism" (pp. 245 ff.), Home University Library. London: Williams and Norgate, 1911.
- ROBERTSON, J. M.: "The Meaning of Liberalism" (p. 121). London: Methuen, 1912.

CECIL, Lord HUGH : "Conservatism" (p. 238), Home University Library. London : Williams and Norgate, 1911.

*Arena* : "Referendum as Safeguard against Class Government." January, 1906. "Direct Legislation through Initiative and Referendum." June, 1907. "A Primer of Direct Legislation." May-July, 1906. "Direct Legislation and Popular Government." May, 1908.

*Contemporary Review* : "Referendum and Representative Government." March, 1911.

*Political Science Quarterly*, September, 1911.